No. 79-1260

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NOEL CHANDLER AND ROBERT GRANGER,
Appellants,

v.

STATE OF FLORIDA,
Appellee.

On Appeal from the Supreme Court of the State of Florida

MOTION FOR LEAVE TO FILE AND BRIEF FOR AMICUS CURIAE CBS INC.

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August 18, 1980

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MOTION FOR LEAVE TO FILE BRIEF FOR AMICUS CURIAE CBS INC. IN SUPPORT OF APPELLEE, THE STATE OF FLORIDA

Pursuant to Rule 36.3 of the Rules of this Court, CBS Inc. hereby moves for leave of this Court to file this Brief Amicus Curiae in support of the position of appellee, the State of Florida.

The grounds for this motion are as follows:

1. Appellants have granted consent to the filing of this amicus brief, but appellee, the State of Florida, has declined to grant its consent. Accordingly, this motion is being filed pursuant to Rule 36.3 of the Rules of this Court.

2. This case involves the question of whether television coverage of appellants' trial denied them their right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments.

3. CBS Inc. ("CBS") operates radio and television networks, and owns VHF television and radio stations located in major cities throughout the United States. The CBS Television Network and CBS Radio Network maintain worldwide news-gathering organizations and each CBS owned station also maintains its own news department. CBS has generally sought to foster the First Amendment rights and interests of the broadcast press through participation in numerous Supreme Court and lower federal court cases.

CBS believes that its journalists have been severely hampered in reporting criminal and civil proceedings by their inability to present the news as it happens through camera and audio coverage of such judicial proceedings. CBS therefore has a strong interest in having the Florida Supreme Court rule permitting television coverage of criminal proceedings upheld. In addition to its commitment and concern in the First Amendment area generally, CBS has a special interest in this case because it participated in the development of much of the equipment now utilized for televised coverage of criminal trials. It is the development of this equipment which provides one of the grounds for distinguishing this case from this Court's earlier decision in *Estes* v. *Texas*, 381 U.S. 532 (1965).

4. This case presents several important issues regarding the State of Florida's interest in providing television coverage of criminal trials, and the interests of CBS and other media in securing access to and providing coverage. Appellee and the several amici in their briefs ably discuss many aspects of these issues. However, CBS believes that its brief can make a useful contribution to this Court in reaching its decision in this case by providing discussion and material on several issues that otherwise will not be addressed in depth.

For example, while other amici participating in this case are involved in news-gathering activities, the pri-

mary focus of their briefs is on other issues and they therefore do not discuss the First Amendment issues in detail. CBS's brief provides this Court with a full discussion of these important questions.

In addition, appellants urge that this Court's decision in *Estes* requires reversal of their convictions. CBS believes that resolution of the question of the significance of *Estes* to this case requires a technical discussion and comparison of the kind of television camera equipment available at the time of the *Estes* trial with that used today, and the CBS amicus brief contains such a comprehensive technical discussion. Also, CBS's brief analyzes the record of this case in detail to demonstrate that the circumstances in *Estes* found to deprive defendant of a fair trial were not present here.

Accordingly, CBS hereby moves this Court for leave to file the following amicus brief in support of the position of appellee.

Respectfully submitted,

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BRIEF FOR AMICUS CURIAE CBS INC.

INTEREST OF AMICUS CURIAE CBS INC.

CBS Inc. operates radio and television networks, and is the owner of VHF television and radio stations located in major cities throughout the United States. The CBS Television Network and the CBS Radio Network maintain worldwide news-gathering organizations, and each of the CBS owned stations also maintains its own news department. At CBS there are more than 1500 individuals engaged in the news-gathering process.

For many years CBS has sought to foster the ability of its own newsmen and those of other news organizations to gather and report the news, including news as to criminal and civil proceedings. CBS believes that it has been severely hampered by its inability to present the news as it happens through camera and audio coverage of such judicial proceedings.

In addition, CBS has generally sought to foster the First Amendment rights and interests of the broadcast media through participation in numerous cases in the Supreme Court and lower federal courts. Moreover, CBS has a strong interest in affirmance of the Florida Supreme Court rule permitting television coverage of criminal proceedings and in rejection of the contention of appellants that such coverage is *per se* unconstitutional.[1] CBS has a special interest in this case because it participated in the development of much of the television camera equipment that is used in coverage of judicial and other proceedings and that was used in coverage of appellants' trial.

SUMMARY OF ARGUMENT

The Florida courts correctly held that, absent any showing of actual prejudice, the televised coverage of appellants' trial pursuant to the provisions of Canon 3A(7) of the Florida Code of Judicial Conduct did not deprive the appellants of their right to a fair trial.

I.

In *Richmond Newspapers* v. *Virginia*, 100 S. Ct. 2814 (1980), this Court recently held that, in view of the public's pressing need for information about the criminal justice system, the public and the press have a First Amendment right to attend and to gather information about criminal trials. The same interests which this Court found constitutionally significant in *Richmond Newspapers* support the State of Florida's decision to permit television coverage of criminal trials.

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[1] While the Florida rule permits coverage of trials by radio as well as television cameras and CBS believes such coverage also serves the public interest, this case concerns the constitutionality of television coverage of criminal trials and this brief accordingly will be limited to that issue.

In view of the inaccessibility of modern trials to the public generally, the press plays an important role as surrogate in informing the public as to the conduct of criminal trials and the functioning of the judicial system. Television can play a unique role in communicating such information since it can reproduce the actual events of the trial. In opening its courtroom to television coverage under appropriate safeguards, Florida properly sought to vindicate the First Amendment interests recognized by this Court in *Richmond Newspapers*.

II.

Press coverage of criminal trials also vindicates Sixth and Fourteenth Amendment interests in the impartial administration of justice by publicizing the events of the trial and thereby discouraging perjury and misconduct by trial participants and encouraging persons with relevant information to come forward. This Court's 1965 decision in *Estes* v. *Texas*, 381 U.S. 532 (1965), holding that televised coverage of that proceeding violated the defendant's right to a fair trial, should not be held to bar televised coverage of criminal trials under appropriate safeguards. *Estes* did not establish a *per se* rule against televised coverage of all criminal trials. Rather, *Estes* has been viewed as turning on the particular and unusual facts of the case and the "circus-like" atmosphere prevailing during that particular trial. It also rested on the limited "state of the art" of television camera equipment available and on the public's unfamiliarity with and lack of exposure to television coverage generally.

This case is clearly distinguishable from *Estes*. Appellants' trial was conducted in a dignified atmosphere, and no actual or probable prejudice was shown. The technological revolution in television camera equipment that has occurred since the *Estes* trial in 1962 now allows courtroom proceedings to be covered in a manner which is nondisruptive of courtroom decorum. Moreover, the pub-

lic's perception of television has changed, and there is no reason to believe that televised coverage of criminal trials has significant adverse psychological effects on the participants.

ARGUMENT

I. STRONG FIRST AMENDMENT INTERESTS ARE SERVED BY THE FLORIDA SUPREME COURT'S RULE PERMITTING THE TELEVISING OF CRIMINAL TRIALS.

In *Richmond Newspapers* v. *Virginia*, 100 S. Ct. 2814 (1980), decided this term, this Court held that the public and the press have a right protected by the First Amendment to attend and to gather information about criminal trials. Although there was no majority opinion, the plurality and concurring opinions[2] based this broad "right of access" on the "unbroken and uncontradicted" history of open trials and on the importance to the public of the manner in which criminal trials are conducted.[3] The Court also recognized the vital role of the press, as representatives of the public, in gathering and disseminating information about the criminal justice system. The Court in *Richmond Newspapers*, however, did not reach the specific question of whether television news broadcasters have a First Amendment interest in bringing television camera equipment into the courtroom to provide televised coverage of trials.

This case involves only the single question whether a state *may* constitutionally permit television coverage of criminal trials. It does not raise the question of whether a state *must* permit such coverage, but only whether the

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[2] Mr. Chief Justice Burger, joined by Justices White and Stevens, wrote the plurality opinion; Mr. Justice Brennan, joined by Mr. Justice Marshall, and Justices Stewart and Blackman, in separate opinions, concurred in the judgment. Mr. Justice Rehnquist dissented.

[3] 100 S. Ct. at 2825 (Opinion of Burger, C.J.).

Sixth or Fourteenth Amendment forbids a state from seeking to vindicate strong First Amendment interests in television coverage of criminal proceedings.

We suggest that the same interests which the Court found constitutionally significant in *Richmond Newspapers* support a State's decision to permit television coverage of trials. The public has a pressing need for information about the criminal justice system. Indeed, as the plurality noted in *Richmond Newspapers*, "it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted . . . ."[4] Information about the judicial system enables the public to determine whether that system as a whole and the conduct of individual trials are "fair and right." *Maryland* v. *Baltimore Radio Show, Inc.*, 338 U.S. 912, 920 (1950). Information about criminal proceedings also enables people to vote intelligently for prosecutors and elected judges—an election process which Florida has adopted—and to "register opinions" on issues of judicial administration. *Cox Broadcasting Corp.* v. *Cohn*, 420 U.S. 469, 492 (1975).

As the opinions in *Richmond Newspapers* recognized, public awareness of criminal trials also promotes community acceptance and support of the criminal justice system by enabling the public to observe and evaluate the trial process along with the results.[5] Moreover, information about trials has a therapeutic value in that it provides the community with an opportunity to express outrage and frustration at the commission of a particu-

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[4] *Id.* at 2827 (Opinion of Burger, C.J.).

[5] *Id.* at 2824-25 (Opinion of Burger, C.J.); 2837 (Brennan, J., concurring).

larly heinous offense, to restore a sense of security and to satisfy the need for retribution.[6]

While in an earlier age the public's need for information about the criminal justice system may have been adequately met by the attendance at criminal trials in the local community, the pace and type of life in America has changed drastically in recent decades. The local county courthouse is no longer, as a practical matter, easily accessible.[7] Therefore the press—both the print and electronic media—in its special role as representative of the people, must funnel observations and information about trials to the growing public that cannot attend. As the plurality in *Richmond Newspapers* explained:

> "Instead of acquiring information about trials by first hand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates of the public." [8]

Notwithstanding appellants' claims to the contrary,[9]

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[6] *Id.* at 2824-25 (Opinion of Burger, C.J.).

[7] *Id.* at 2825 (Opinion of Burger, C.J.); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491-92 (1975).

[8] 100 S. Ct. at 2825 (Opinion of Burger, C.J.).

[9] Appellants in their brief persistently denigrate the role of television in making information about governmental—especially judicial—affairs available to the public. For example, they contend that "televising of criminal trials does not contribute to, or otherwise promote that lofty end" of public trials which they claim is simply "to protect the accused." App. Br. at 26. Rather, "[t]elevision is like the 'Devil's Hook'—so tempting yet so dangerous . . . . No good can come of it." *Id.* at 71. "Even if the electronic media had a Constitutional right to televise a trial," they argue, the information broadcast would be useless because "people simply cannot absorb meanings at the speed of light." *Id.* The suggestion seems to be that the public cannot be trusted with information provided by television.

television has a special role to play in communicating information about the judicial system, and the numerous limitations imposed by the states upon the electronic media's reporting of criminal trials may have had significant adverse effects on the public's awareness of the conduct of criminal proceedings.[10]

There can be no question now that televised coverage of criminal trials would reach large elements of the public who look to television as its primary source of news. Television is an overridingly significant source of news in and of American life. In fact, according to a recent study, it is the principal source of news for more than two-thirds of the American public and for one-third television is the sole source of news.[11] In addition, over the last ten years, television has been identified by a more than two-to-one margin as the "most trusted" source of news.[12]

It may be urged, however, that even if cameras are excluded from the courtroom, television reporters and sketch artists with pad and pencil would still be able to attend criminal trials and report the events. But since television is a visual medium, the denial of access to

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[10] In fact, a recent study indicates that the public is shockingly ignorant or skeptical about the judicial system. *See* 1 Yankelovich, Skelly and White, Inc., THE PUBLIC IMAGE OF COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, LAWYERS AND COMMUNITY LEADERS, prepared for the National Center for State Courts, May, 1978. For example, the study reports that 77 percent of the public has little or no familiarity with federal courts; 74 percent with state courts; and 63 percent with local courts. Moreover, 37 percent of the public believes that a person accused of a crime must prove his or her innocence and 25 percent believe that court decisions are primarily affected by political considerations. *Id.* at 13-14, 30.

[11] Roper Organization, Inc., PUBLIC PERCEPTIONS OF TELEVISION AND OTHER MASS MEDIA: A TWENTY YEAR REVIEW 1959-1978 (April 1979).

[12] *Id.* at 4.

the courtroom of television cameras places a severe limitation upon the ability of television to perform its normal function of informing the public.[13] Moreover, the electronic medium, if limited to merely descriptive reporting, is deprived of the ability to present a reproduction of the actual event and is unable to communicate the crucial tones, inflections, gestures, impatience or inattentiveness—qualities which this Court noted in *Kleindienst* v. *Mandel*, 408 U.S. 753, 765 (1972), constitute the "atmosphere" of a court proceeding. Broadcasters, if permitted to televise criminal trials, could contribute substantially to increased public awareness and understanding of the judicial system. The Brief Amici Curiae of the Florida News Interests notes that this has been precisely Florida's experience with regard to television coverage of trials. Since television cameras are able to record trials, the televised nightly news has contained many more stories of trials which are longer, more detailed and reflect actual events in the courtroom. This coverage has increased public awareness of and enhanced the public's perception of the judicial system; it has also contributed to lively and informed debate about important public issues. *Id.*

The special role of television in informing the public has increasingly been recognized in the context of both governmental proceedings generally and criminal proceedings. For example, Congress has permitted such coverage of both Senate and House Committee meetings since 1970,[14] and the House of Representatives recently began

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[13] Indeed, the same study by Yankelovich, Skelly and White, Inc., *supra* n.10, reported that "the public generally feels that media coverage today is not adequate to show how the court system works nor how effective it is [and] there is widespread opinion that media should play an expanded role in showing how the courts work and how effectively they operate . . . ." *Id.* at 58.

[14] Senate Rule XXVI, 5(C), S. Doc. 96-46, Standing Rules of the Senate, 96th Cong., 2d Sess. (Mar. 25, 1980).

live audio and film coverage of its floor debates.[15] The same policy has caused the Florida legislature to permit television coverage of meetings of administrative agencies and legislative deliberations[16] as well as judicial proceedings. And as the Joint Brief for Amici Curiae Radio Television News Directors Association *et al.* demonstrates, an increasing number of states presently allow for some form of television coverage of criminal proceedings in recognition of the importance of television to greater public awareness of the court system.

Whether these strong First Amendment interests create a constitutionally protected right to televise criminal trials need not be decided in this case.[17] As we have noted, this case presents only the question whether a state may, constitutionally, permit television coverage of criminal proceedings with appropriate safeguards.[18] We submit the answer to that question is clearly in the affirmative.

In adopting the experimental rule at issue in this case, the Florida Supreme Court in *In re Petition of Post-Newsweek Stations*, 370 So. 2d 764 (Fla. 1979), while finding no constitutional right of broadcasters to televise criminal trials, clearly sought to vindicate the same

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[15] *See* H. Res. 866, 95th Cong., 1st Sess., 123 Cong. Rec. 11678 (1977); 123 Cong. Rec. H. 11679 (daily ed. Oct. 27, 1977) (Rep. Sisk).

[16] *See* discussion *infra* at 28; a more complete discussion of Florida's commitment to open government may be found in the Brief Amici Curiae of the Florida News Interests.

[17] In *United States* v. *Columbia Broadcasting System, Inc.*, 497 F.2d 102 (5th Cir. 1974), the Fifth Circuit held that failure to allow sketch artists with their pencils and notebooks into courtrooms was an impermissible prior restraint on freedom of the press absent any showing that the sketching was disruptive or obtrusive.

[18] The Florida Supreme Court rule permitting televised coverage of criminal trials is accompanied by numerous safeguards concerning the type of equipment, number of cameramen and technicians and placement of equipment that may be used in the courtroom. *See* discussion *infra* at 22-26.

First Amendment interests which this Court recognized in *Richmond Newspapers*.[19] Even Mr. Justice Rehnquist's dissenting opinion in *Richmond Newspapers*, 100 S. Ct. at 2842, would support the Florida Supreme Court's decision, for that dissent stressed the importance of allowing states to make their own judgments as to the opening of criminal trials to media coverage.[20]

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[19] *See* 370 So. 2d at 780-81.

[20] Appellants rely on the due process clause of the Fourteenth Amendment to support a *per se* rule barring cameras from the courtroom. But, as this Court has noted, the requirement of due process in state criminal proceedings is, in fact, a "comman[d], not [of] a particular procedure, but only [of] a result"—that of " 'fundamental fairness . . . [in] fact finding.' " *McKeiver* v. *Pennsylvania*, 403 U.S. 528, 554 (1971) (Brennan, J., concurring, *quoting* Blackmun, J.). This Court has been very reluctant to recognize *per se* rules in this area in recognition of the right of states to establish individual procedures to govern criminal proceedings within their jurisdictions. *See, e.g., Manson* v. *Brathwaite*, 432 U.S. 98 (1977) (Court declined to adopt a *per se* rule excluding out-of-court identification evidence whenever it is obtained through unnecessarily suggestive confrontation procedures); *Henderson* v. *Kibbe*, 431 U.S. 145 (1977) (Court held that erroneous or omitted jury instructions, without more, are insufficient to render the entire proceeding unfair); *Ristaino* v. *Ross*, 424 U.S. 589 (1976) (Court declined to impose a mandatory requirement that veniremen be examined concerning their possible prejudice in cases involving confrontations between members of different races); *United States* v. *Marion*, 404 U.S. 307 (1971) (Court held that a 38-month post-indictment delay in a criminal trial was not unconstitutional absent a showing of actual prejudice to the conduct of the defense).

Thus states have been granted wide discretion to develop and use procedures which might be mandated for criminal trials in federal court. *See, e.g., North* v. *Russell*, 427 U.S. 328 (1976); *Williams* v. *Florida*, 399 U.S. 78 (1970). And in such cases this Court has adhered to a critical admonition of Justice Cardozo: A state rule of law "does not run afoul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at bar." *Snyder* v. *Massachusetts*, 291 U.S. 97, 105 (1934); *see Spencer* v. *Texas*, 385 U.S. 554 (1967); *Bucholter* v. *New York*, 319 U.S. 427 (1943).

Experimentation of the sort conducted by Florida allows the state to define the best method of conducting its own criminal proceedings and to make an independent judgment as to the best method of informing its people about the conduct of criminal trials. Moreover, such experimentation provides an important source of empirical data which can be useful to other states and the federal courts in determining whether to permit televised coverage of criminal trials. We suggest that nothing in the Constitution forbids such state experiments with camera coverage of criminal trials.

II. TELEVISION COVERAGE OF APPELLANTS' TRIAL PURSUANT TO FLORIDA'S RULE DID NOT DEPRIVE APPELLANTS OF A FAIR TRIAL.

Press coverage at criminal trials not only serves First Amendment interests, but also vindicates Sixth and Fourteenth Amendment interests in the impartial administration of justice. For example, as this Court noted in *Richmond Newspapers*, publicity discourages perjury and misconduct of trial participants by exposing them to public review. It also encourages judge, jury and counsel to perform their duties more conscientiously. Moreover, press coverage of a trial makes it possible for persons who might not otherwise know that they have information relevant to the trial or who could rebut false testimony to come forward and testify. Indeed, accurate fact-finding, enhanced by press coverage of trials, benefits the defendant by assuring him a fair trial, and the public by preventing a miscarriage of justice that results in imprisonment of an innocent person while the offender remains at large.[21]

Appellants nonetheless argue that the televising of criminal trials is a *per se* violation of the Sixth Amendment. They rely almost exclusively upon this Court's 1965

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[21] *See* 100 S. Ct. at 2824 (Opinion of Burger, C.J.); 2838 (Brennan, J., concurring).

decision in *Estes* v. *Texas*, 381 U.S. 532 (1965).[22] In view of appellants' contention that *Estes* is dispositive of this case, a brief discussion of the facts in *Estes* is appropriate. Billy Sol Estes, a highly-publicized financier, had been indicted by a Texas County grand jury for theft, swindling and embezzlement. The Court found that massive pretrial publicity in that case had given the trial national notoriety and that the pretrial proceedings and trial had been conducted in a "carnival atmosphere." *Id.* at 577. This "carnival atmosphere" was found to have resulted in part from media coverage of the pretrial and trial proceedings. Portions of both proceedings had been broadcast live by radio and television and the court pointed out that numerous television cameras, cameramen and technicians had been stationed throughout the courtroom. *Id.* at 535-36, 552-53. A mass of cables and wires were "snaked across the courtroom floor" and glaring lights and noise interfered substantially with the solemn dignity and decorum of the courtroom. *Id.* Moreover, the Court noted that the trial judge was "harassed" throughout the proceedings by the presence of television cameras and was forced to enter numerous orders restricting the location and use of the television equipment, thereby adding to the confusion of jury and other trial participants. *Id.* at 551. As the Court noted:

> "[A]t least 12 cameramen were engaged in the courtroom throughout the hearing taking motion and still pictures and televising the proceedings. Cables and wires were snaked across the courtroom floor, three microphones were on the judge's bench and others were beamed at the jury box and the counsel table. It is conceded that the activities of the television crews and news photographers led to considerable disruption of the hearings." *Id.* at 536.

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[22] App. Br. at 37.

The Court relied heavily on this disruption in finding that television and other media coverage of the pretrial hearing and trial deprived the defendant of a fair trial.[23] Yet even under these circumstances, *Estes* was decided by a five to four vote.

While the opinion of Justice Clark in *Estes* is designated a "majority" opinion, it makes clear that Justice Harlan, who provided the necessary fifth vote for the majority, joined in the Court's opinion "subject to the reservations and to the extent indicated in his concurring opinion . . . ." 381 U.S. at 534. That concurring opinion makes clear that Justice Harlan joined the majority only because the case was "notorious" (*id.* at 587), that is, because it "was a heavily publicized and highly sensational affair." *Id.* at 590.

While rejecting a First Amendment right of the media to televise criminal trials, and finding a denial of due process in that particular case, Justice Clark's opinion noted that even in *Estes* a different result might obtain as a result of future changes in technology and the public's "adjustment to [the] presence" of television cameras. *Id.* at 551-52. Similarly, Justice Harlan's opinion stated that "the day may come when television will have become so commonplace an affair in the daily life of the average person as to dissipate all reasonable likelihood that its use in courtrooms may disparage the judicial process." *Id.* at 595-96.

It is thus clear that *Estes* was, to a significant extent, dependent upon its unique and, so far as we know, never repeated facts. It is equally plain, as Mr. Justice Brennan emphasized in his dissenting opinion, "only four of the five Justices voting to reverse rest[ed] on the proposi-

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[23] Justice Clark's opinion focused on the pretrial hearing because of the importance of publicity at this stage of the proceeding, the fact that the veniremen were present in the courtroom, and the fact that four members of the trial jury were exposed to the pretrial hearing. 381 U.S. at 535-36. Justice Harlan's opinion focused on the trial itself.

tion that televised criminal trials are constitutionally infirm, whatever the circumstances." *Id.* at 617. And in the three cases in which this Court has since discussed *Estes* in detail, it has not suggested that *Estes* established a *per se* rule against television coverage of criminal trials. Thus, in *Sheppard* v. *Maxwell*, 384 U.S. 333 (1966), decided less than one year after *Estes*, the Court concluded after an extended comparison of the two cases that, in *Sheppard* as in *Estes*, it was "the totality of circumstances" that warranted reversal. 384 U.S. at 352. Similarly, in *Murphy* v. *Florida*, 421 U.S. 794 (1975), the Court stressed that in *Estes* the intrusive and disruptive actions by the press, including television broadcasters, created a "circus atmosphere" which deprived the defendant of a fair trial. Again, in *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539 (1976), the Court emphasized that the particular facts in *Estes* led to a finding that due process had been denied. *Id.* at 552.[24]

Similarly, three recent federal courts of appeals decisions viewed *Estes* as having been based upon the totality of facts presented and not upon a conclusive presumption that television is prejudicial. For example, in *United States* v. *Provenzano*, 620 F.2d 985 (3d Cir. 1980), the Third Circuit concluded that prejudice amounting to a denial of due process would be presumed only where the news media pervaded the proceedings, such as the trial in *Estes* "where cumbersome television equipment invaded the courtroom." *Id.* at 995. Similarly, in *Brinlee* v. *Crisp*, 608 F.2d 839 (10th Cir. 1979), *cert. denied*, 100 S. Ct. 737 (1980), the court held that the conviction in *Estes* had been reversed because the "circus atmosphere" had deprived the defendant of a fair trial. *Id.* at 847. And in *United States* v. *Capo*, 595 F.2d 1086

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[24] Similarly, none of the references to *Estes* in this Court's opinions in *Richmond Newspapers* suggests that the *Estes* case establishes a *per se* ban on the televising of criminal trials. *See* 100 S. Ct. at 2821, 2826, 2827, 2830, 2833, 2837.

(5th Cir. 1979), *cert. denied*, 100 S. Ct. 660 (1980), the Fifth Circuit stated that prejudice was presumed in *Estes* because

> "the press saturated the community with sensationalized accounts of the crime and court proceedings, and was permitted to overrun the courtroom, transforming the trial into an event akin to a three-ring circus." *Id.* at 1090-91 (citation omitted).

Thus, subsequent decisions both of this Court and the lower federal courts clearly indicate that the holding in *Estes* was dependent on the particular and unusual facts of that case. We suggest that this case is distinguishable from *Estes* on at least three separate grounds:

First, and most importantly, there is no evidence whatever that appellants' trial here "was a heavily publicized and highly sensational affair" or that it was conducted in a "circus" atmosphere, and there is no indication that there was any actual or probable prejudice as a result of the television coverage of appellants' trial.

Second, present technology utilized in the coverage of criminal trials generally—and utilized in this case—is substantially different from that utilized at the time of *Estes*, and is not likely to disrupt the dignity or decorum of a criminal trial.

Third, in view of the public's familiarity with and acceptance of television today, the concerns expressed in *Estes* as to the adverse psychological impact of television coverage on trial participants are no longer valid, and there is no sound basis for presuming that any significant adverse psychological effects on jurors, witnesses or other participants occur.[25]

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[25] A fourth significant distinction, discussed in the Joint Brief for Amici Curiae Radio Television News Directors' Association *et al.*, is that the Court in *Estes* found it constitutionally significant that almost all the states had rules prohibiting television coverage of trials. A great change has taken place since *Estes*, and now a

A. Appellants Have Made No Showing of Actual or Probable Prejudice as a Result of Television Coverage of Their Criminal Trial.

The Florida rule which appellants challenge in this case in fact carefully and specifically provides for protection of criminal defendants to ensure that coverage will not and cannot create a disruptive atmosphere. Indeed, the Florida Supreme Court explicitly stated that "in certain circumstances it is appropriate to prohibit electronic media coverage of particular participants," and it provided the presiding judge with discretion to bar television coverage where appropriate. *In re Petition of Post-Newsweek Stations*, 370 So. 2d 764, 779. Subsequent state court decisions demonstrate that this discretion has been exercised to exclude television cameras where there is reason to apprehend possible prejudice to the defendants.[26]

Appellants objected generally to any camera coverage of any aspect of their trial,[27] and claim that television coverage is inherently and always prejudicial.[28] But appellants have made no showing, nor do they claim, that the Florida rule permitting camera coverage of criminal trials was in any way violated in their case. Moreover, they did not seek to restrict camera coverage of any particular aspect of the trial on the ground that prejudice was likely to occur and they do not now claim any particular prejudice from coverage of their trial.

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significant number of states allow television cameras to be present at criminal trials.

[26] For example, in *Green* v. *State*, 377 So. 2d 193 (Fla. 3d DCA 1979), an appellate court reversed a conviction because the trial court had failed to allow the defendant an evidentiary hearing to prove that she would be prejudiced by the presence of television cameras in the courtroom. *See also Palm Beach Newspapers, Inc.* v. *State*, 378 So. 2d 862 (Fla. 4th DCA 1979); *King* v. *State*, No. 52,185 (Fla. May 8, 1980).

[27] Tr. at 55-57.

[28] App. Br. at 37.

The record indeed discloses that during appellants' trial the Florida rule was faithfully complied with and that appellants suffered no prejudice.

The circumstances of appellants' trial were routine and clearly did not constitute a "highly publicized and sensational affair." [29] On December 5, 1977, appellants, two Miami Beach police officers, were tried and convicted on a four-count indictment of the May 23, 1977 burglary of Picciolo's Restaurant in Miami Beach.[30] The state introduced testimony and a tape-recording made by a Mr. Sion who heard, and subsequently taped, a conversation on his short-wave radio regarding a burglary in progress.[31] The prosecutor alleged that the recorded conversation was one between appellants using walkie-talkies and that it occurred while they were burglarizing Picciolo's Restaurant.[32] Mr. Sion, his mother and a friend who had listened to the tape recording, as well as several Miami Beach police officers testified for the prosecution,[33] and appellants' wives testified for the defense.[34] Appellants themselves did not testify.

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[29] *Estes*, 381 U.S. at 590.

[30] Tr. at 1080-83.

[31] Tr. at 362-455; 859-61.

[32] Tr. at 1001-34.

[33] Police officers testified that they had seen appellants cruising in their police car in the area of Picciolo's Restaurant on the evening of May 22 and early morning hours of May 23, 1977 and that they were not on duty at the time. Mr. Sion, his mother and the friend testified about the circumstances surrounding the making of the tape recording and that, to the best of their recollection, the recording was made on May 23, 1977. Tr. at 362-455 and 859-62 (Mr. Sion); Tr. at 863-73 (Mrs. Sion); Tr. at 702-41 (Mr. Froschneider).

[34] Appellants' alibi defense—testified to by their wives—was that each had been at home on the evening of May 22, went to bed about

Like the case itself, the pretrial and trial coverage by the print and broadcast media of the appellants' case was routine. Indeed, television cameras were not even present during the pretrial suppression hearing,[35] and were present only on two occasions during the three and one-half day trial.[36] We understand that news coverage of the trial consisted of only a few brief reports shown on consecutive evening news broadcasts.[37] At no time did appellants claim that adverse pre-

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11 p.m. and did not leave his home until late the next morning. Tr. at 895-902 (Mrs. Granger); Tr. at 903-22 (Mrs. Chandler).

At an earlier hearing to suppress the tape recording evidence, appellants claimed that their voices were those on the tape but that it had been made on May 30, 1977—a week after the actual burglary—and that they had "staged" the burglary in order to see if anyone was listening to their walkie-talkie station. Tr. at 25-38.

[35] Appellants claim that the fact that no television cameras were present at the pre-trial hearing is "fortuitous." App. Br. at 6. Since television stations in Florida are permitted to cover pretrial hearings, we suggest that the reason this particular hearing was not covered was because the television stations did not consider it sufficiently newsworthy.

In *Estes* at the pre-trial hearing at least twelve cameramen were present taking motion and still pictures and televising the proceedings live. All the seating in the courtroom was taken and at least 30 people were standing in the aisles. 381 U.S. at 535-36, 552-53.

[36] Tr. at 55, 57, 65, 357.

[37] The actual Florida experience with television coverage of criminal trials, described in detail in the Brief Amici Curiae of the Florida News Interests, together with the experience with the television coverage of the Chandler trial, refute the hypothetical fears articulated by Chief Justice Warren in his concurring opinion in *Estes* regarding televised trials. 381 U.S. at 571-74. Trials are not perceived by Floridians as a form of entertainment; they are not scheduled so as to enhance television station ratings nor to accommodate prime time viewers; television broadcasters do not "hype" the trials that are televised by focusing on personalities and providing legal "play by play" analysis of the defense and prosecution

trial publicity prevented them from getting a fair trial by an impartial jury. In addition, unlike petitioners in *Estes*,[38] appellants here did not move for a change of venue or seek a continuance on the ground that adverse pretrial publicity made a fair trial impossible.

The actual process of televising the trial was also routine and not disruptive, and there is also no suggestion in the record that the presence of television cameras during portions of appellants' trial disturbed the proceeding.[39] Moreover, unlike the judge in *Estes*,[40] the trial judge here was clearly not "harassed" by problems with cameras and his attention was not diverted by issuing orders regarding camera coverage of the proceeding.[41]

In the course of the *voir dire*, during which a television camera was present, each prospective juror was informed by appellants' counsel that he or she was "likely

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strategy; neither do they insert "[c]ommercials for soft drinks, soups, eyedrops and seatcovers . . . when there [is] a pause in the proceedings." *Id.* at 571.

Rather, Floridians are generally provided with brief segments of trials—as in *Chandler*—on the televised evening news in much the same way that they are provided with news segments about local and national legislative events and presidential activities. Television coverage of trials, far from being regarded by either television broadcasters or the public as entertainment, is perceived as an extremely useful way to convey information about the judicial system and to alert people to significant public issues.

[38] In *Estes*, a continuance of one month was sought and granted on this ground. 381 U.S. at 535-36, 554.

[39] Appellants acknowledge in their brief that "the cameras' operations are less disruptive by virtue of technological improvements." App. Br. at 28. There is also no evidence of any disruption caused by still cameras.

[40] 381 U.S. at 551, 568-69.

[41] On one occasion the court here did advise the cameraman that no adjustment to the camera during the trial was permitted. Appendix at 15.

to be on television as a result of this case," and asked whether "that fact [would] affect you in some way."[42] Each replied that it would not.[43] And all the prospective jurors said that if they were instructed by the judge not to "watch anything or to turn on television in order to see yourself in connection with this trial," they could comply. *Id.* at 10. In fact, in neither of the two brief segments of the trial that were televised was the face of any juror shown.

The court also instructed the jury prior to its first night's recess "to avoid seeing and hearing anything about this case as reported in any of the media," and suggested that "[p]erhaps it might be a good idea if you just avoid the local news and watch only the national news on television."[44] At the conclusion of the state's case the Court cautioned the jury to "[p]lease remember and carefully abide by those instructions."[45] Again, at the conclusion of the evidence the Court explained, "at this time it is most important . . . that you carefully remember and carefully abide by the instructions I gave you at the beginning of each of the nightly recesses we have had in the past."[46] The record reveals no evidence suggesting that any juror failed to comply with these

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[42] *Id.* at 9.

[43] *Id.* at 8-12. Moreover, three prospective jurors—not two, as appellants incorrectly claim, App. Br. at 6—stated that they had been on television, thus indicating some familiarity with the process of being televised. Appendix at 10. One of these persons actually served on the jury in this trial. Tr. at 205.

Contrary to appellants' statement, App. Br. at 6, the record does not reflect that "one juror at first said that she thought that the presence of the camera during the trial would lead her to believe '. . . there is something special about this case.' (A-9)." *See* Appendix at 9-10.

[44] *Id.* at 13. There was no national news coverage of the trial.

[45] *Id.* at 16.

[46] *Id.*

instructions in any way. Appellants did not seek any other or additional instructions to the jury in this regard.

Appellants also make no showing that the witnesses testifying at trial were adversely affected by the presence of cameras during the trial, nor does the record suggest otherwise. No witness requested that he or she not be televised.[47] The court, at the request of appellants' counsel, directed counsel to "instruct each of your witnesses not to watch any television coverage of this trial." [48] There is no evidence that any witness violated these instructions.

There is also no suggestion that any witness was reluctant to testify because of the presence of cameras. There is, further, no suggestion that either the prosecution or the defense chose not to call any witness because of television coverage of the trial.

As this summary reveals, the facts in this case are vastly different from those which confronted this Court in *Estes*. There is no suggestion, much less any showing, that a "circus atmosphere" prevailed, or that the actual atmosphere of the courtroom here differed in any material respect from that prevailing throughout the United States in the hundreds of criminal trials conducted each day. In view of the fact that *Estes* rests so clearly on its particular facts and the finding of probable prejudice on those facts, we suggest that this case is clearly distinguishable from *Estes*.

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[47] App. Br. at 7.

[48] Appendix at 14. Appellants' brief inaccurately describes the record on this point by implying that the judge ignored their request for instructions to the witnesses. App. Br. at 7.

B. Present Technology Utilized in the Coverage of Trials Generally—and Utilized in This Case—Is Substantially Different From That Utilized at the Time of Estes.

Not only was the actual conduct of this trial very different from *Estes*, but television camera equipment in use today, and which was utilized in the trial of these appellants, is substantially different from the cumbersome equipment available at the time of the *Estes* case, thus alleviating the concerns expressed in *Estes* as to the intrusive nature of that equipment.

While neither the record nor the opinions in the *Estes* case comprehensively catalogs and describes the equipment that was present in the *Estes* courtroom, the opinions and the accompanying photographs clearly reveal that the equipment utilized in that trial was typical of the television equipment available at the time, which is described generally in the technical literature.[49]

The Court noted in *Estes* that at least six studio cameras were present at the pretrial hearing, two set up inside the bar and four others immediately outside the gates, and at least four such cameras were stationed in a specially constructed booth in the rear of the courtroom during the trial. 381 U.S. at 553. At the time of the *Estes* trial cameras utilized vacuum tubes rather than transistors, and studio cameras accordingly weighed approximately one hundred pounds and were extremely large—about two feet long, one foot wide and one and one-half feet high. As a result of its size and weight, a studio camera was usually mounted on a bulky tripod

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[49] *See, e.g., Color TV Cameras Dominate NAB Show,* BROADCASTING, April 17, 1967, at 52-55; *Broadcasters Get Wide Color Camera Choice,* BROADCASTING, April 11, 1966, at 60-65; *Plumbicon Cameras Ready,* BROADCASTING, Feb. 22, 1965, at 110; *Sylvania, RCA Unveil New Portable Cameras,* BROADCASTING, Jan. 27, 1964, at 64.

with a large mounting head and occupied approximately seven square feet of floor space. Also, at this time television cameras could not operate efficiently without high levels of illumination far above those found in a normal courtroom setting, and it is clear on the *Estes* record that at the time of the pretrial hearing in that case, special flood lights were utilized which could cause substantial heat and glare.

Moreover, at the time of *Estes* television cameras were not self-contained units as they are today. The power supply, control unit and synchronization generator, all essential to the transmission of the picture, were contained in a mobile van. In *Estes*, the concurring opinion of Chief Justice Warren pointed out that "'[a] television motor van, big as an intercontinental bus, was parked outside the courthouse . . . .'"[50] and contributed substantially to the disruption that pervaded the *Estes* trial. In order to connect each camera to the van, two sizeable cables were required. A cable of more than one inch in diameter was required to connect each floodlight to a large metal "break-out box" at the base of the light and other cables connected the box to the van outside. The Court in *Estes* noted that as a result "[c]ables and wires were snaked across the courtroom floor . . . ." *Id.* at 536, 553.[51]

A revolution in the technology of television camera equipment has occurred since *Estes*,[52] and the Florida

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[50] 381 U.S. at 553, *quoting* New York Times, Sept. 25, 1962, p. 46, col. 4.

[51] Not only studio but motion picture cameras were present at the *Estes* pretrial hearing and trial. *Id.* at 554. These motion picture cameras could be extremely distracting since moving parts rotated the film reel on the camera and made a substantial amount of noise.

[52] *See, e.g.*, Nishi, *Mini-Cameras*, in TELEVISION NEWSGATHERING (1976); PAULSON, ENG/FIELD PRODUCTION HANDBOOK (1976); *A Technological Strike at ABC*, BUSINESS WEEK, Aug. 8, 1977, at 67;

Supreme Court rule effectively requires that this modern equipment be utilized.[53] As noted above, the rule permits only one portable television camera in any trial court proceeding and permits it to be operated by only one person.[54] The Chief Judge of the judicial district must designate the location of the equipment and, once in place, it may not be moved during the proceeding. The rule also specifies that no additional lighting or movement of technicians supervising the equipment is to be permitted. No separate audio system is allowed; the audio system present in the courtroom must be utilized.[55]

Cameras meeting these requirements today are generally hand-held, transistorized, video tape electronic cameras that weigh only eighteen to twenty pounds and are about one-seventh the size of the old studio camera. Since these cameras are so much smaller and lighter than the cameras in use at the time of *Estes*, they can be mounted on far smaller tripods which occupy less than two square feet of floor space, or about 25 percent of the floor space required by the tripods used in *Estes*. These cameras are self-contained; the control unit, power supply and synchronization generator are all contained within the camera, thus eliminating the need for a large motor van. Moreover, these cameras can operate indoors without additional floodlights and their accompanying glare, heat and cables. The Florida rule also requires

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More Versatility, Lower Costs for ENG Equipment, BROADCASTING, April 4, 1977, at 82; Schneider, *One of These, Some of Those*, BROADCASTING, Oct. 25, 1976, at 47; *Little Cameras Make Big Splash at Convention*, BROADCASTING, Mar. 25, 1974, at 63; *Smaller is Better For CBS News*, BROADCASTING, Nov. 12, 1973, at 54.

[53] *In re Petition of Post-Newsweek Stations*, 370 So. 2d 764, 792, Appendix 3.

[54] In addition, the rule permits only one still photographer with no more than two still cameras to be present. *Id.*

[55] *Id.*

the video tape recording equipment be located in a distribution room in the courthouse, thus eliminating any need for even a video tape recorder adjacent to the camera.[56]

Advances in lens technology enable a single camera today with a ten millimeter lens to cover almost a 180 degree surface, thus reducing the need for the substantial number of cameras present at the *Estes* pretrial and trial procedings. One camera, placed high and in a corner, now can record the events taking place in an entire courtroom.

As the opinions in *Estes* recognized, such changes in television equipment are constitutionally significant. 381 U.S. at 552, 595-96. Indeed, these changes strongly influenced the Florida Supreme Court in its decision to adopt a final rule permitting television cameras in the courtroom. Thus the court observed:

> "Technological advancements have so reduced size, noise, and light levels of the electronic equipment available that cameras can be employed in courtrooms unobstrusively." *In re Petition of Post-Newsweek Stations*, 370 So. 2d at 775.

And the Massachusetts Advisory Committee on Media Coverage of the Court recently concluded that the state court rule barring television from the courtroom was obsolete as a result of advances in technology:

> "The advent of modern communications equipment eliminates the need to ban such equipment from the courtroom. Still cameras no longer require flashes [and] small video cameras, without yards of obnoxious cables, can be strategically placed so as not to interfere with the proceedings . . . ." [57]

The court in *CBS, Inc.* v. *Lieberman*, 439 F. Supp. 862 (N.D. Ill. 1976), recognized that these significant

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[56] *Id.*

[57] *Report on the Advisability of Permitting Electronic Recording of Court Proceedings For News Purposes* (June 1, 1979).

changes in technology made television camera equipment no more disruptive of the trial process than the sketch artist's pencil and paper:

> "We recognize that today's television filming equipment is a far cry from that which was employed in *Estes*. As a result of contemporary technology, filming can be done with no additional lights. The videotape cameras are not much larger than a shoe box. They can be operated on standard 120 volt current. Indeed, they can be operated by a battery pack carried by the cameraman. Perhaps the day has arrived when equipment of this nature should be likened to pencil and paper and afforded the same protection as that extended to courtroom sketching." *Id.* at 867 (citation omitted).

Not only is the equipment less disruptive, but some experts believe that the presence of cameras can even enhance the decorum of the proceedings by diminishing the need for numerous reporters and sketch-artists inside and outside the courtroom.[58] The Brief Amici Curiae of the Florida News Interests provides a detailed discussion of this point. We suggest that whatever the disruptive effects of the television equipment present in *Estes*, a far different situation prevails today.

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[58] *See, e.g.*, Fretz, *Cameras in the Courtroom*, 14 TRIAL 28 (1978); Monroe, *The Case for Television in the Courtroom;* 21 FED. COMM. BAR J. 48 (1967); Tate, *Cameras in the Courtroom: Here to Stay*, 10 U. OF TOLEDO L. REV. 925 (1979); Weinstein and Zimmerman, *Let the People Observe Their Courts*, 61 JUDICATURE 156 (1977); Wilson, *Justice in Living Color: The Case for Courtroom Television*, 60 ABA J. 294, 295 (1974).

In justifying adoption of its rule permitting camera coverage of criminal trials, the Florida Supreme Court appeared to agree that allowing television coverage of criminal trials was less disruptive than the traditional out-of-court method of covering such trials. *In re Petition of Post-Newsweek Stations*, 370 So. 2d at 781.

C. In View of the Public's Acceptance of Television Today, the Concerns Expressed in *Estes* as to the Adverse Psychological Impact of Television Coverage on Trial Participants Are No Longer Valid.

Appellants virtually concede in this Court that the equipment used for televising criminal trials is not intrusive.[59] However, they claim that the mere presence of cameras has an adverse psychological impact on trial participants, and that this was the basis for the *Estes* decision.[60] Notably, appellants make no effort whatsoever in their brief to show that the participants in this particular trial suffered any adverse psychological effects from the television coverage of the proceedings.[61]

Whatever potential adverse effects of television coverage of criminal trials were feared at the time of *Estes*—when television was in its infancy and intrusive equipment was required—the fears are no longer valid today.[62] Not only has the equipment changed; so has the public's familiarity with television. In 1965, television was a novel medium; today a television set is an accepted part of everyday life in virtually every American home. Indeed, most households now have two television sets,[63] and they are watched on the average more than six and one half-hours each day.[64]

The revolution in camera technology has freed television news from the confines of the studio, and events

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[59] App. Br. at 38.

[60] *Id.*

[61] *Id.* at 27-32.

[62] Indeed, as the Joint Brief for Amici Curiae Radio Television News Directors' Association *et al.* discusses in detail, an increasing number of states, apparently recognizing this, have permitted some form of televising of criminal trials.

[63] A.C. Nielsen Co., TELEVISION AUDIENCE (1979).

[64] A.C. Nielsen Co., NIELSEN TELEVISION INDEX (NTI) (Jan. 1980).

which previously were covered only rarely because of the cumbersome nature of studio cameras and the extraordinary expense and inconvenience of film, today receive routine coverage by cameras reflecting the new technology. As a result, television cameras are present at numerous events of general public interest.[65] And, in marked contrast to the situation which existed at the time of *Estes*, the public now accepts television cameras almost without notice.

Television coverage of official public proceedings has also become commonplace. Florida's "Sunshine Law" is one of the most sweeping in the nation.[66] Florida citizens find cameras at meetings of administrative agencies, school boards and county commissions, city councils, legislative deliberations and other events of public debate.[67] Florida citizens have been exposed to television cameras when they testify at zoning hearings, appear before school boards, petition for changes in county ordinances or petition the state cabinet.[68] Even religious services are televised. And television coverage of all of these proceedings is accomplished without interfering with the solemnity and dignity of the occasion.[69]

Despite the hypothetical concerns of Justice Clark in *Estes* as to the adverse effects of television coverage of

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[65] *See* PAULSON, ENG/FIELD PRODUCTION HANDBOOK (1976), §§ 2.14-2.15, 3.7.

[66] *See* Fla. Stat. § 286.011; *Canney* v. *Board of Pub. Instruction*, 278 So. 2d 260 (Fla. 1973).

[67] *See* LeRoy, Wotring and Lyle, *Today in the Legislature—the Florida Story*, 24 J. COMMUNICATION 92 (1974).

[68] *See* statement by Don MacCullough, Director of Educational Media Program for Dade County, Report of Post-Newsweek Stations, *In re Petition of Post-Newsweek Stations*, 370 So. 2d 764 (1979), Appendix at 41.

[69] *See, e.g.*, Commentary, Canon 3A(7), Alabama Canons of Judicial Ethics.

trials on judges and lawyers, 381 U.S. at 548-49, trial judges and lawyers in Florida as well as other states have reported favorably on the use of television in courtrooms.[70] A survey conducted by the Office of the State Court Administration for the Florida Supreme Court and referred to in the Florida Supreme Court decision to adopt a final rule permitting cameras indicates that trial participants' perception of the judiciary and the dignity of the courtroom are not adversely affected by the fact that the proceeding is televised.[71] Moreover, although participants are aware of the presence of television cameras in the courtroom, the cameras have almost no effect on them.[72] In addition, jurors are not concerned that persons outside the courtroom will attempt to influence their decision more because the trial is televised and not simply reported in the newspapers.[73] In other states as well, assessments made by trial participants who have been televised, including attorneys, jurors, witnesses and judges, reveal that the presence of television cameras has not caused any adverse psychological effects.[74]

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[70] *See In re Petition of Post-Newsweek Stations*, 370 So. 2d 764, 769-70.

[71] *Id.* at 768.

[72] *Id.*

[73] *Id.* at 769.

[74] *See, e.g., Report of the Supreme Court Committee to Monitor and Evaluate the Use of Audio and Visual Equipment in the Courtroom* (April 1, 1979 (Wisconsin)); *In re Hearings Concerning Canon 35 of the Canons of Judicial Ethics*, 296 P.2d 65 (Colo. 1956); Goldman and Larson, *News Camera in the Courtroom During State* v. *Solorzano: End to the Estes Mandate?*, 10 SOUTHWESTERN L. REV. 2001 (1978) (Nevada).

Other evaluations and reports are included in the Report of Post-Newsweek Stations, *In re Petition of Post-Newsweek Stations*, 370 So. 2d 764. *See also* evaluations contained in Note, *Lights, Camera, Action: This Court is Now in Session*, 14 GONZAGA L. REV. 623, 632 (1979).

Appellants' suggestion that this Court should presume the existence of adverse psychological effects is accordingly unwarranted and untenable.

CONCLUSION

For the reasons stated above, the judgment of the Florida Supreme Court should be affirmed.

Respectfully submitted,

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